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11 UNITED STATES DISTRICT COURT  
12  
13 NORTHERN DISTRICT OF CALIFORNIA

14 In re  
15 CARRIER IQ, INC. CONSUMER PRIVACY  
16 LITIGATION

No. C-12-md-2330-EMC

**CASE MANAGEMENT STATEMENT  
PURSUANT TO COURT'S ORDER OF  
MARCH 1, 2018**

17 This Document Relates to:  
18 ALL CASES  
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1 The parties respectfully submit this Case Management Statement in response to the Court's  
2 order of March 1, 2018. (Dkt. No. 508.)

3 **Plaintiffs' statement**

4 As the Court will recall, it granted final approval to a nationwide class settlement of  
5 plaintiffs' claims on August 25, 2016. (Dkt. No. 481.) It also issued an Order Granting in Part and  
6 Denying in Part Plaintiffs' Motion for Award of Attorneys' Fees, Costs, Expenses, and Service  
7 awards, as well as the Judgment terminating this matter, that same day. (Dkt. Nos. 483 and 485.) In  
8 its final approval order, it overruled objections from three individuals. (Dkt. No. 481 at 7-8.) Two  
9 of these objectors, Sam Miorelli and Patrick Sweeney, filed notices of appeal, Dkt. Nos. 488<sup>1</sup> and  
10 489, respectively, on September 23, 2016 (Miorelli) and September 26, 2016 (Sweeney).

11 The Ninth Circuit dismissed Sweeney's appeal on February 2, 2018, for failure to pay fees or  
12 prosecute. Order, *In re: Carrier iQ Consumer Litig.*, No. 16-16817, 2017 WL 4574828 (9th Cir.  
13 Feb. 8, 2017).

14 The Ninth Circuit docketed Miorelli's Appeal on October 7, 2016. (Dkt. No. 1, *In re:*  
15 *Carrier iQ Consumer Litig.*, No. 16-16816 (Miorelli Appeal).) After arranging to have the Excerpts  
16 of Record transmitted to that court, Miorelli Appeal Dkt. No. 10, Miorelli submitted his appellant's  
17 brief on February 17, 2017, Miorelli Appeal Dkt. No. 12.

18 The matter was then referred to the Circuit Mediator, Miorelli Appeal Dkt. Nos. 17-20, 22-  
19 24, and further briefing was placed on hold as Class Counsel and Miorelli endeavored to determine,  
20 with the Circuit Mediator's able assistance, whether Miorelli's appeal could be settled, *see generally*  
21 *id.*

22 On September 21, 2017, Class Counsel, on behalf of plaintiffs-appellees, agreed to settle  
23 Miorelli's appeal for \$25,000 (Settlement Sum), with each side to bear its own costs and fees,  
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26 <sup>1</sup> Miorelli's notice of appeal indicated that he was appealing from the Court's Order Granting  
27 Final Approval of Class Action Settlement, Certification of Settlement Class, and Appointment of  
28 Class Representatives and Class Counsel; the Court's Order Granting in Part and Denying in Part  
Plaintiffs' Motion for Award of Attorneys' Fees, Costs, Expenses, and Service Awards, and the  
Judgment. (*Id.*)

1 pursuant to Fed. R. App. P. 42(b) (“The circuit clerk may dismiss a docketed appeal if the parties file  
2 a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due.”).

3 The settlement of Miorelli’s appeal (Settlement) contemplates that the settlement sum will be  
4 paid from plaintiffs’ attorneys’ fee award. But because the Court made this fee award to Class  
5 Counsel, the Settlement also sets forth the condition that such payment will only be made if this  
6 Court approves the payment from Class Counsel’s fee award. *See* Miorelli Appeal Dkt. No. 24  
7 (Ninth Cir. order attached as Exhibit 1).

8 In light of the foregoing, Miorelli has dismissed his appeal against plaintiffs-appellees  
9 conditionally. (*See* Miorelli Appeal Dkt. No. 23.) If this Court does not approve the payment from  
10 Class Counsel’s fee award, or if other possibilities come to pass, *see* Ex. 1 hereto, then the  
11 Settlement may be extinguished, in which case the parties would return to the Ninth Circuit to  
12 complete adjudication of Miorelli’s appeal. (*See id.*)

13 The parties also wish to apprise the Court of the bankruptcy of defendant Pantech Wireless,  
14 Inc., which occurred well after judgment was entered in this matter and well after Pantech deposited  
15 its share of the underlying settlement sum into escrow pending disbursement pursuant to the Court’s final  
16 approval order. While Class Counsel made inquiry and was advised that Pantech had no objection to  
17 the Settlement or to the conditional dismissal of Miorelli’s appeal, as evidenced by its signature on  
18 Miorelli’s stipulated notice of conditional dismissal, Miorelli Appeal Dkt. No. 23, nonetheless, in an  
19 abundance of caution, Class Counsel engaged bankruptcy counsel and sought relief from the  
20 automatic stay in Pantech’s bankruptcy, which was filed in the Northern District of Georgia. This  
21 request was granted. *See* Order, *In re Pantech Wireless, Inc.*, No. 16-bk-72088 (Bankr. N.D. Ga.  
22 Feb. 7, 2018) (Dkt. No. 68) (attached as Exhibit 2). The bankruptcy court’s order provides  
23 specifically, *inter alia*, that the automatic stay shall not bar or affect the conditional dismissal of  
24 Miorelli’s Ninth Circuit appeal, these proceedings, or disbursement of cash settlement funds to settlement  
25 class members in the underlying matter. *See id.*

26 Class Counsel have asked Miorelli to compile the reasonable attorneys’ fees, costs, and  
27 expenses he has incurred to-date in his appeal. In response, he has filed a declaration setting these  
28 forth.

1 Also, Miorelli and Class Counsel have filed a stipulated request that the Court approve  
2 payment of the Settlement Sum to Miorelli from the attorneys' fees awarded to Class Counsel.

3 The parties are prepared to appear at the case management conference currently scheduled  
4 for March 15, 2018 and answer any questions that the Court may have regarding the items raised  
5 herein. However, if the Court does not have any questions, and approves the stipulated request, then  
6 the parties to the Settlement will move forward toward its full consummation, assuming that no  
7 conditions occur which lead to plaintiff-appellees' withdrawal from the Settlement. Thereafter,  
8 Miorelli's appeal will be dismissed with finality, as will the defendants-appellants'<sup>2</sup> appeals from this  
9 Court's decision denying their request to refer the incorporated matters to arbitration. (*See Kenny v.*  
10 *Carrier iQ Inc.*, No. 14-15843 (9th Cir., filed Apr. 30, 2014); *Kenny v. Carrier iQ Inc.*, No. 14-  
11 15846 (9th Cir., filed Apr. 30, 2014).) Once the Effective Date accrues under the underlying  
12 settlement agreement, then, per the Court's final approval order, disbursement of settlement benefits to  
13 all concerned can begin, and the settlement administrator can pay Miorelli out of Class Counsel's fee  
14 award.

15 Most importantly, the settlement administrator will then be able to proceed with disbursing  
16 cash settlement benefits to settlement class members who made valid, payable claims, all without the  
17 additional time it would have taken to fully resolve Miorelli's appeal on the merits.

18 **Defendants' statement**

19 Defendants take no position with respect to the terms of the plaintiffs-appellees' Settlement  
20 with Miorelli. However, defendants also do not oppose entry of the stipulated request made by  
21 plaintiffs-appellees and Miorelli to pay him the Settlement Sum from the attorneys' fees awarded to  
22 Class Counsel by the Court.

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<sup>2</sup> This reference does not include Motorola, which did not file a motion to refer the case against it  
28 to arbitration, such that it did not appeal, either.

1 Dated: March 8, 2018

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*Attorneys for Defendant Motorola Mobility LLC*



**FILER'S ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

DATED: March 8, 2018

By: /s/ Daniel L. Warshaw  
DANIEL L. WARSHAW

876280.1

# EXHIBIT 1

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FEB 22 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: CARRIER IQ, CONSUMER  
PRIVACY LITIGATION,

-----

PATRICK KENNY, individually and on  
behalf of himself and all others similarly  
situated,

Plaintiff-Appellee,

v.

SAM A. MIORELLI,

Objector-Appellant,

v.

CARRIER IQ, INC.; et al.,

Defendants-Appellees.

No. 16-16816

D.C. No. 3:12-md-02330-EMC  
Northern District of California,  
San Francisco

ORDER

The purpose of the parties in entering this stipulation to dismiss without prejudice is to return jurisdiction to the district court to seek its approval of the Settlement Agreement which resolves this appeal.

Pursuant to the stipulation of the parties, this appeal is dismissed without prejudice to its reinstatement upon the occurrence of any of the Triggering Occurrences as defined by the parties herein and the Objector-Appellant's filing a timely motion to reinstate.

Objector-Appellant must file a motion to reinstate this appeal within 28 days of any of the following Triggering Occurrences, whichever occurs first:

(1) Objector-Appellant's written notice of disapproval of the draft Stipulation [and Proposed Order] re: Appeal or motion prepared by counsel for Plaintiffs-Appellees and the parties' failure to reach an agreement on revisions to that draft document that are mutually acceptable within ten days of the written notice of disapproval;

(2) The filing of any objection or opposition to the motion or stipulation seeking district court approval of the Settlement Agreement or the filing of any objection to, or appeal from, the district court approval of the Settlement Agreement and the subsequent election in writing by counsel for Plaintiffs-Appellees to rescind the Settlement Agreement; or

(3) the district court filing an order declining to approve the Settlement Agreement in full, including its conditional payment term.

A copy of this order shall serve as the mandate of this court.

FOR THE COURT

By: Margaret A. Corrigan  
Circuit Mediator

MAC/Mediation

# EXHIBIT 2



**IT IS ORDERED as set forth below:**

**Date: February 7, 2018**

A handwritten signature in black ink, reading "James R. Sacca".

---

**James R. Sacca**  
**U.S. Bankruptcy Court Judge**

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In re:

PANTECH WIRELESS, INC.,

Debtor.

-----  
PATRICK KENNY, DANIEL PIPKIN, LUKE  
SZULCZEWSKI, ERIC THOMAS, BRIAN  
SANDSTROM, and COLLEEN FISCHER, on their  
own behalf, and on behalf of the Settlement Class  
they represent,

Movants,

v.

PANTECH WIRELESS, INC.,

Respondent.

No. 1:16-bk-72088

JUDGE: James R. Sacca

CHAPTER 11

**ORDER**

The Motion for Relief from the Automatic Stay (the "Motion," Dkt. No. 62) of Movants Patrick Kenny, Daniel Pipkin, Luke Szulczewski, Eric Thomas, Brian Sandstrom, and Colleen

Fischer, filed on their own behalf and on behalf of the Settlement Class they represent (collectively, the “Movants”), came on for hearing on February 6, 2018 in the above entitled Court, before the Honorable James R. Sacca, United States Bankruptcy Judge.

The Court, having read and considered the Motion and finding that notice of the Motion was proper and that no opposition has been filed, and for good cause appearing, it is therefore:

**ORDERED** that:

1. The Motion is granted in its entirety;
2. Relief from the automatic stay is approved “for cause” under 11 U.S.C. § 362(d)(1);
3. As to Movants, their successors, transferees, and assigns, the automatic stay under 11 U.S.C. § 362(a) is hereby terminated as to the Debtor and the Debtor’s bankruptcy Estate for the following:
  - a. To allow any and all matters to proceed (including documents created/executed, and orders to be entered) to effectuate the dismissal of the Ninth Circuit Appeal commonly known as *Patrick Kenny, et al. v. Sam A. Miorelli v. Carrier IQ, Inc., et al.*, Case No. 16-16816.
  - b. To allow any and all proceedings in the *Carrier iQ* Matter pending in the District Court, commonly known as *In re Carrier iQ, Inc. Consumer Privacy Litigation*, N.D. Cal. No. 12-md-2330-EMC, to proceed (including but not limited to the creation/execution of documents and entry of orders/judgments), all in accordance with applicable non-bankruptcy law, so any and all settlements in that matter can be fully initiated with all parties, and the cash settlement benefits then disbursed to the Settlement Class members;
4. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code;
5. This order is binding and effective in any Bankruptcy Case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the *Carrier iQ* Matter pending in the District Court or the

Ninth Circuit Court of Appeals (both as defined in the Motion and para. 3, *supra*).

6. This order shall be effective and enforceable immediately upon entry,  
notwithstanding Fed.R.Bankr.P 4001(a)(3).

END OF DOCUMENT

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